APPEAL NO. 93065

This appeal arises under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts. 8308-1.01-11.10 (Vernon Supp. 1993) (1989 Act). A contested case hearing was convened in city, Texas, on October 2, 1992, and was reconvened on November 30th. Appellant (hereinafter carrier) appeals the determination of hearing officer that the respondent (hereinafter claimant) sustained a compensable injury on or about Date of injury. Specifically, the carrier contends the hearing officer erred in finding claimant was exposed to increased amounts of metals and chemicals while working for her employer, and in finding that claimant developed allergic dermatitis as the result of such exposure, resulting in the conclusion that claimant sustained an injury in the course and scope of her employment. No response was filed by the claimant.

DECISION

Upon review of the record in this case, we affirm the decision and order of the hearing officer.

Claimant had worked for (employer), a manufacturing company, since 1987. After initially working in forming, which involved bending wire and boxing it, she moved to plating where she worked as an unloader. She testified that the plating department had vats where metals were first dipped in nickel and in chrome and then washed and rinsed. Claimant worked on the floor below the vats, unloading the plated materials. While she wore gloves, boots, and an apron and did not have to immerse her hands, she said she was exposed to metals through breathing and through cuts and scratches on her arms and hands. After about a one-year period she said she had to transfer out of plating because she would get a film on her face which would cause her eyes to burn and her face and ears to remain red for about two hours after the film was washed off. She moved to welding at that point, and at the time of the hearing said she had been in welding for about a year, but she occasionally filled in for individuals in plating. She said that while the material she welded had not yet been plated with nickel, the welding department was five to seven feet from plating and the two were separated by a cinder block wall.

In late December 1991 or early January 1992, she said she worked in plating for a week. On Date of injury, her hands began itching, and she developed a rash. She went to Hospital's emergency room where her diagnosis was "presumptive contact dermatitis (suspect metal)," and she was instructed to temporarily avoid handling metal parts and to make an appointment with a dermatologist or an allergist. Claimant said that on January 20th she saw Dr. B, a dermatologist, because her employer said she needed a release before she could come back to work. Dr. diagnosis was pruritus, which Dorland's Medical Dictionary, 27th Edition, defines as itching or any of various conditions marked by itching. She went back to work in forming and shipping on January 21st, and broke out in a rash again.

Claimant said employer then referred her to its doctor, Dr. C, who she said told her

she had "an over-histamine release from nerves." Dr. Cs medical notes admitted into evidence state, "[claimant] is having diffuse itching, it seems to come and go. She is describing whelps or hives. I don't see any definite lesions at this time. There is no sign of any parasites." Dr. C assessment was urticaria, which is defined in Dorland's Medical Dictionary, 27th Ed., as "a vascular reaction, usually transient, involving the upper dermis, representing localized edema caused by dilation and increased permeability of the capillaries, and marked by the development of wheals. Many different stimuli are capable of inducing an urticarial reaction, and it may be classified according to precipitating causes . . ."

Claimant testified that she continued to work, although she took some vacation days off work. On February 15th while she was working in plating she broke out in a rash. Shortly thereafter she was seen by Dr. T, who opined "dermatitis allergic vs. toxic," and referred her to Dr. M, an allergist. Dr. M performed tests and on February 27th wrote that claimant was very allergic to nickel sulfate and should avoid exposure to it. Claimant said Dr. M prescribed nickel desensitization shots, which she administered herself.

Employer wrote Dr. M on March 4th in response to his note of February 27th, expressing concern that the environment claimant worked in could not be made free of nickel to the extent necessary to prevent her reaction to it. On March 20th, Dr. M replied as follows: ". . . [claimant] has a definite very severe sensitivity to nickel metal. I agree with the idea that it is commonly used as a `hardener' to many metals and is also used in jewelry, etc.; however, the information I received was that she had no problems with this until she had worked for some period with your company, so it is my personal opinion that she has become sensitive with increased regular exposure and is now developing a chronic exposure . . . toxic products such as metals or other chemicals are known to cause a dysregulation of varying degree to the immune system so that once sensitized to such an exposure, other sensitizations may develop . . . I also know that once a sensitization occurs that even small exposures can continue to provide a response, so it would be impossible to state with certainty how much exposure would be tolerable."

At carrier's request, the claimant was examined by Dr. C, who in a lengthy June 16th report described claimant's occupational history with employer. He noted that individuals working in plating had to wear protective clothing, and that during the loading of parts onto plating racks there is no known contact with any of the solutions that may be used in that area, including nickel and chromium. However, he also noted claimant's statement that she was sometimes required to go to the other end of the processing area to take the materials off. His review of her position in welding showed the metals she would be working with were steel welding rods with some copper, but no nickel.

Dr. C reviewed claimant's past medical consults and lab results, noting that a complete blood count was within normal limits and disclosed no chromium or nickel. Prior

doctors, he said, had diagnosed essentially atopic dermatitis. Dr. C also reported on his site visit of June 11th. In the plating area, he said, "tanks [containing, among other things, nickel and chromium] sit approximately 6-8 feet above the loading and unloading . . . evaluation of these reveals very little fumes coming off, perhaps one or two inches over the top of the tanks. There does not appear to be any fumes drifting down, and ventilation in the area, while antiquated, appears to be sufficient. Aprons, gloves, and if one is working with the metal itself or in the tanks, respirators are required for plating . . ."

Dr. C also noted that during the examination claimant "became nervous and had an outbreak of a 3x5 cm erythematous maculopapular exanthema."

Dr. C concluded, ". . . while there may be validity to working in the area of nickel and other chemicals, the direct contact was in all probability at the unloading end. We have confirmed . . . that they had instituted the changes according to OSHA rules and regulations in 1990 . . . Contact dermatitis with heavy metals is widely known in industry, and precautions are usually taken. Chronic ongoing, as well as some acute contact dermatitis with nickel, has been recorded. The same is true of chromium. For completeness sake, it is recommended that [claimant] be seen by a psychologist familiar with occupational medicine . . ." He also recommended testing urine levels, ventilation studies, and possibly stopping claimant's nickel desensitization shots.

Dr. C in his report noted that he heard of no other complaints when talking with workers at employer's plant. JB, a coworker, stated in an unsigned and unsworn statement that he knew of no problems at work with nickel exposure; that the only place such exposure could occur would be in the loading area and that by the time someone in unloading handled the metal the nickel surface would be covered with chrome. He stated, however, that when he was in unloading he developed a rash which was cleared up with ointment and pills, although he attributed the rash to sweating while wearing long rubber gloves. He also said unloaders were required to pick up the metal parts and wash them off with a hose. Another coworker Mr C, said in a transcribed interview that he was aware claimant had broken out while working in plating; he also broke out in a rash but found out that the powder inside his rubber gloves was causing his rash. Another coworker, BC, testified at the hearing that vapors and fumes came off the vats and that, despite the washing process "that stuff is dripping all over them when they're unloading them parts." He stated that "nearly everybody breaks out."

Dr. M reported that as of April 6th claimant had little or no eruption evident, and that she could return to work in an area where there was little exposure to nickel dust. Claimant confirmed that her rash had almost entirely subsided after being away from work, although she said she was told by employer after the benefit review conference that she was not to return to work until her claim was resolved. She said her last working day for employer was August 10th.

On July 15th claimant saw Dr. E, a psychiatrist. He ordered a nickel serum test which showed claimant's level to be 0.1 NG/ML, with normal range being 1.4 to 4.0. Dr. Emmanuel discharged the claimant on August 6th, stating her case was outside his expertise. Claimant said he referred her to another allergist with whom she had been unable to get an appointment.

Pursuant to carrier's request, Dr. C reviewed claimant's medical reports and, in a September 30th letter, offered his opinion. He noted that he could only find one place where a physician documented having seen claimant's rash, which was in the emergency room visit. He also found no reference to nickel poisoning, but rather diagnosis of contact dermatitis due to nickel which, he said "is very different to nickel poisoning and can be caused, in some sensitive individuals, by skin contact with minute quantities of the offending substance." He also noted diagnoses of urticaria which he said could be caused by many things, including allergies or psychogenic reaction. He recommended that the claimant be given a trial of return to work in an area with minimal nickel exposure, with subsequent evaluation by a board certified dermatologist. He also recommended that Dr. M treatments and diagnostic methods be reviewed by a physician certified by the American Board of Allergy and Immunology.

Carrier's witness DW, employer's personnel manager, said claimant was an unloader in plating from October 31, 1988 to November 6, 1989, and thereafter was a machine operator in welding and forming. She acknowledged that claimant sometimes filled in for someone in the plating department. She also said claimant reported a rash to her in January but that claimant's arm had "red areas at times that she might have been scratching," but no rash or raised area. She said at least one other employee had had contact dermatitis, but she knew of no employee who had developed a rash from inhaling fumes. She said air sampling by OSHA disclosed "nothing in the air."

HB, the corporate director of human resources for employer's parent company, described the plating process and said it involved no contact with nickel. He said claimant as an "unracker" would stand four to five feet away from the end of the assembly line and that the residue removed by rinsing did not include any nickel residue. He said welding was a preplating process involving no nickel plating. He also confirmed that air sampling of unspecified materials revealed nothing that exceeded the PEL (permitted exposure level).

The carrier in its appeal challenges the following of the hearing officer's findings of fact and conclusion of law:

FINDINGS OF FACT

3.Between January 6, 1992 and January 11, 1992, and at other unspecified times prior to January 6, 1992, the Claimant worked as an "unloader" in the plating department for the Employer.

4.The Claimant was exposed to an increased level of nickel, chromic acid, other unknown metals, and chemicals while working for her Employer in the plating department.

5.The Claimant developed a rash (allergic dermatitis) on her hands and arms, on Date of injury, as a result of increased exposure to nickel, chromic acid, other unknown metals, and chemicals in her workplace.

CONCLUSIONS OF LAW

2.The Claimant proved, by a preponderance of the evidence, that she sustained an injury in the course and scope of her employment on or about Date of injury.

The carrier argues on appeal that the overwhelming weight of the evidence is against the above findings and conclusion of the hearing officer. It claims that there is a lack of medical evidence supporting the hearing officer's determination; that Dr. M diagnosed urticaria, which it contends is a rash which is psychogenic or allergic in nature. Carrier also cites Dr. C report (which discusses the lack of direct contact in her work area, and implies that her reaction is a nervous one), the negative blood tests, and the inability of Dr. E to find a correlation between claimant's complaints and allegations of exposure on the job. It also denies claimant's contention that other employees have rashes. Claimant's condition, carrier concludes, is an allergic reaction unrelated to anything which happens on the job. No expert testimony showed a causal connection between the job and the disease, so that the underlying condition, as well as any aggravation or acceleration thereof, is not compensable under the 1989 Act.

The 1989 Act includes occupational diseases within the definition of the term "injury." Article 8308-1.03(27). To be compensable as an occupational disease, it must be one arising out of and in the course of the claimant's employment, and cannot be an ordinary disease of life to which the general public is exposed outside of the employment. Home Insurance Co. v. Davis, 642 S.W.2d 268 (Tex. Civ. App.-Texarkana 1982, no writ). To establish the existence of an occupational disease, there must be probative evidence of a

causal connection between a claimant's work and the disease; that is, the disease must be indigenous to the work or must be present in an increased degree as compared with employment generally. Schaefer v. Texas Employers Insurance Association, 612 S.W.2d 199 (Tex. 1980).

The Texas Supreme Court has set forth three methods of establishing a causal relationship between injury and incapacity in workers' compensation cases. These are: (1) general experience or common sense; (2) sequence of events plus scientific generalizations testified to by a medical expert; and (3) testimony of probable causation articulated by a medical expert. Parker v. Employers Mutual Liability Ins. Co. of Wisconsin, 440 S.W.2d 43 (Tex. 1969). Lay testimony alone may be sufficient to prove causation where the general experience of people is such that they can anticipate that the disability in question would follow the injury proved. Colonial Penn Franklin Insurance Co. v. Mayfield, 508 S.W.2d 449 (Tex. Civ. App.-Amarillo 1974, writ ref'd n.r.e.). In addition, where medical science has been able to develop criteria to determine the probability of causal relationship between injury and disability and where the injury is not so complicated as to preclude the fact finder's evaluation of the sequence of events between injury and disability, the fact finder is permitted to consider testimony of medical possibilities or other scientific generalizations together with the particular sequence of events to determine reasonable medical probability from the evidence as a whole. Trinity Universal Ins. Co. v. Walker, 203 S.W.2d 308 (Tex. Civ. App.-Austin 1947, writ ref'd n.r.e.). As this panel has earlier ruled in a case involving occupational disease from heavy metal exposure, lay testimony of a claimant's working condition can be considered along with medical testimony connecting the condition to the injury. Texas Workers' Compensation Commission Appeal No. 91002, decided August 7, 1991, and cases cited therein.

In this case, both the lay and the medical evidence were in conflict. The claimant testified to reactions she suffered when working in and around the plating department, and to the fact that her symptoms abated when she was away from employer's facility. Carrier's witnesses, on the other hand, disputed that claimant's job required her to handle or otherwise suffer exposure to nickel. That nickel and chrome were present in the workplace was not in dispute. Likewise, the expert testimony ran the gamut from Dr. M, who diagnosed a nickel sulfate allergy and linked claimant's sensitization unequivocally to her workplace, to Dr. C, who appears to have believed claimant had no opportunity for exposure and that her symptoms were psychogenic in origin. Between these two extremes were other medical opinions which may have found or suspected an allergic reaction, but which did not necessarily link it to the workplace. We note that carrier's reviewing doctor, Dr. Cr, stated that contact dermatitis could be caused by skin contact with minute quantities of a substance.

When presented with conflicting evidence, the hearing officer as trier of fact may believe one witness and disbelieve others, and may resolve inconsistencies in the testimony

of any witness. McGallaird v. Kuhlmann, 722 S.W.2d 694 (Tex. 1986). Likewise, any conflicts or inconsistencies in medical evidence or in the testimony of expert medical witnesses are to be resolved by the trier of fact. Highlands Underwriters Insurance Co. v. Carabajak, 503 S.W.2d 336 (Tex. Civ. App.-Corpus Christi 1973, no writ). In this case, sufficient evidence existed for the hearing officer to determine that claimant was exposed in the workplace to a substance or substances that caused her allergic condition. Upon review of the evidence, we cannot say that the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, warranting setting aside the decision. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. Civ. App.-San Antonio 1983, writ ref'd n.r.e.).

The decision and order of the hearing officer are accordingly affirmed.

Lynda H. Nesenholtz
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Susan M. Kelley
Appeals Judge